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REMARKS

Copy of the draft letter
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FROM: (Name, org. symbol, Agency/Post)

M. La

Room No.—Bldg.

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OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA
FPMR (41 CFR) 101-11.206

Mr. M.G. Mefferd

State Oil and Gas Supervisor

Division of Oil and Gas

Department of Conservation

1416 9th Street, Room 1310

Sacramento, CA 95814

Dear Mr. Mefferd:

This is in response to your application for primary enforcement responsibilities over the Class II portion of the Underground Injection Control program.

We have reviewed your application and request clarification of certain sections of the program description. The specific comments which must be addressed are listed by section in Attachment 1. The latest draft of the Memorandum of Agreement is also included, as Attachment 2, for your request.

The response to our comments should be provided by section. If the response and the original application together proves to be a successful demonstration of the State program under Section 1425 of SDWA, the response will be made an appendix to the original application. This will avoid a wholesale revision of the application prior to notifying the public that the application is available for review.

If you have any questions, please don't hesitate to call Nathan Lau of my staff at (415) 974-8310.

Sincerely yours,

Frank M. Covington

Director, Water Management Division

Attachments

cc: Clint Whitney, State Water Resources Control Board

Jim Allen, State Water Resources Control Board

974-8146
DIRECT

Section

A. Structure, Coverage, and Scope of the State Program

1. Section 3224 of the California Public Resource Code (CPRC) ~~as~~ speaks of ordering necessary tests and remedial work to "...prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or domestic purposes...". Section 3106 states that the supervisor must prevent damage to "natural resources... and damage to underground and surface water suitable for irrigation or domestic purposes...". Are these two assertions the legal equivalent of endangering drinking water sources as used in Section 1421(b)(1)(B) of the SDWA?

Same
as
Q-1
of 7/16/81

2. Section 1723.2 of Title 17, California Administrative Code (CAC) is not defined. This term "fresh water" which either the Attorney General or the Division of Oil and Gas.

was the term "fresh water" defined?

Same
as Q-4

3. Under Section 3106 of the CPRC, the Supervisor must prevent, as far as possible, damage to natural resources, etc. Does the policy and operational history indicate a broad or narrow interpretation of "as far as possible"?

Q-3

4. The Program Description does not discuss implementation of primacy to extend to protecting offshore aquifers. This should be clarified.

Q-1
of General
Comments

5. If the State has or claims authority over Indian lands, citation or

Q-2 of
G.C.

explanation of such activity should be evidenced.

6. Section 1724.6 of the CAC requires ^{the} Division approval prior to subsurface injection or disposal and requires the operator to provide such data as the Supervisor deems pertinent and necessary for proper evaluation. Assuming that "damage to water suitable for irrigation or domestic purposes" is analagous to endangering drinking water sources, this places the burden on the applicant. This should be clarified.

7. Is the data required under Section 1724.7 sufficient to make a judgment on endangerment as prescribed in Section 1421 of the SDWA?

Q 5 of
Sec II

8. The term "person" as defined in Sections 3010 and 3011 of the Public Resources Code must include Federal Agencies as required by 1421(b)(1)(D)(I). This should be verified by demonstration of statutory or case law from the Attorney General.

This has
been done
by AG

9. The States' authority over activities on property owned or leased by the Federal government should be verified by demonstration of statutory or case law.

This has
also been
done

B. Description of the State Permitting Process

1. Any difference between a permit and an order should be clarified.

2. Section 3208 of CPRC states that applications not responded to

within 10 days are deemed approved. What is the practical effect of this rule based on the operational history?

3. Section 3229 of CPRC states that a "notice of intent to abandon" not responded to in writing within 10 days shall be deemed to be approved. What is the practical effect of this rule based on operational history?

H. Description of Rules Used by the State to Regulate Class II Wells

1. Section 1772 of CAC permits the establishment of field rules and permit exceptions to be made for casing and cementing requirements. Are these consistent with the overall requirements to protect water suitable for irrigation or domestic purposes?

K. Monitoring, Inspection and Reporting

1. There is no indication of how the Division keeps records or how often inspections are actually made or by whom.
2. Though the necessary authorities exist for inspection, monitoring, record keeping, and reporting, is there any independent verification of the accuracy of the reports, actions, and data?
3. Sections 1724.7(c)(3) and 1724.10(c)-(j) addresses monitoring. These requirements may be modified for good cause. What have been and are the effects and conditions of modification?

4. Various sections of the regulations, provided that certain tests, actions, etc., be witnessed by division personnel. The frequency with which each of the tests and actions are witnessed should be clarified.

L. Enforcement Program

1. It is not clear as to what enforcement mechanisms the State has available for action against either repeat or very serious violators. Can actions be taken in situations where a willful violator waits until a State compliance order is issued before correcting a serious violation? Does the State have discretion to seek penalties for the past violation even if the operator complies with the subsequent State order?

M. Aquifer Exemption Process

1. Are aquifer exemptions granted for mineral bearing or mineral producing aquifers?
2. Under Sections 3013, 3106 and 3255 of the CPRC, the Supervisor is given broad authorities, including that over the aquifer exemption process. The Program Description or Memorandum of Agreement should spell out specific policies, requirements and procedures (e.g., public notice, public participation, criteria) for aquifer exemptions.
3. In Appendix B - Table 1, the areal extent and depths of 81 non-

hydrocarbon producing aquifers proposed for exemption are described. the following additional information for each aquifer is necessary to evaluate the proposed exemptions.

- a. certification that the aquifer does not supply any public water system;
- b. total dissolved solids concentration (initial and current);
- c. operational history (date of initial injection, average annual quantity injected, years in operation and current level of use; and
- d. quality of the fluid material (e.g., chemical analysis).

O. Other Agency Involvement

1. A copy of the "agreement" between the Division and the State Water Resources Control Board should be provided.

R. Public Participation

1. The policies for public notification should be more clearly stated as it relates to the projects, new permits, and modifications of existing permits.
2. The specific procedures for public participation should be provided.

3. A brief operational history of the public participation effort should be provided.

S. Complaint Response Procedures

1. Only written complaints by adjacent landowners or operators within one mile are required to be investigated. what is the policy for treating informal complaints? What is the operational history?

Lau: Rathbun

reading file

draft 3/9/82

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